FISCAL NOTE

SB 27 - HB 43

FIRST EXTRAORDINARY SESSION

April 7, 1999

SUMMARY OF BILL:

1. Redefines business earnings under the excise tax law to provide that the corporate owner of a pass-through entity that participates in the management or control of the pass-through entity, directly or indirectly, by virtue of an affiliated corporation, would be deemed to be engaged in the pass-through entity unitary business activity. If a tiered pass-through entity were involved, the ultimate owner of the tiered pass-through entity would be deemed to be the owner of the pass-through entity engaged in business in Tennessee.

2. Removes the exemption from excise tax for businesses doing business in Tennessee solely because of one of the following activities:

   - ownership of a limited partnership interest, when the limited partner's only business activity in Tennessee is the holding of the limited partnership interest, and the limited partner cannot exercise any power, management or control over the partnership, except those outlined in the Revised Uniform Limited Partnership Act; or
   - ownership of a membership interest in a board-managed limited liability company located or doing business in Tennessee.

3. Adds a new provision that a corporate owner of a pass-through entity, that either participates in the management or control of the pass-through entity directly or indirectly by virtue of an affiliated corporation, would be deemed to own its percentage interest of the assets owned or leased by the pass-through entity. If tiered pass-through entities are involved, the ultimate owners would be deemed to be the owners of the pass-through entity engaged in business in Tennessee. Also, if affiliated corporations participate in the management or control of the pass-through entity, the pass-through entity unitary business income would be reported on a combined return by all of the affiliated corporations' combined percentage interest of the operations of the pass-through entity, unless the Commissioner of Revenue consents to an election by each of the affiliated corporations to the filing of separate returns in Tennessee reflecting such corporation's percentage interest of the pass-through entity unitary business income. If affiliated corporations participate in the management or control of the pass-through entity, each of the affiliated corporations that are owners of such pass-through entity must file combined returns and pay tax on the combined percentage interest of the ownership interest, surplus and undivided profits of the pass-through entity unless the commissioner consents to an election by each of the affiliated corporations to the filing of separate returns in Tennessee, reflecting each of the affiliated corporation's percentage interest in the ownership, interest, surplus and undivided profits.

4. Defines *pass-through entity* as a partnership, limited liability company, limited liability partnership and any other unincorporated association on which the owner includes the income, gain and loss of the entity in the owner's federal tax computations.

5. Authorizes the Commissioner of Revenue to require, or a taxpayer to petition for, any of the following items in order to determine a fair representation of a taxpayer's net earnings:
    - separate accounting
    - exclusion of any factor (property, payroll and sales) from the formula used to determine the excise tax
    - inclusion of additional factors that will fairly represent the taxpayer's business activity in this state, or
    - the employment of any other method to achieve a fair allocation and apportionment of a taxpayer's net earnings in Tennessee.
6. Authorizes the Commissioner of Revenue to:
    - distribute, apportion, or allocate income, deductions, credits, or allowances between two or more businesses that are owned or controlled by the same interests.
    - require combined reports using a common apportionment formula from members of an affiliated group of corporations.
    - disregard any entity or transaction that has no business purpose or is created or made primarily to evade the federal income tax or the excise tax.

ESTIMATED FISCAL IMPACT:

Increase State Revenues - Exceeds $100,000,000

Estimate is based on projecting franchise and excise tax revenues using average growth rates and comparing those with current projections for franchise and excise tax growth.

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.

James A. Davenport

James A. Davenport, Executive Director